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6 **UNITED STATES DISTRICT COURT**

7 **EASTERN DISTRICT OF CALIFORNIA**

8
9 JOHN CEDILLO,

10 Petitioner,

11 v.

12 C. BATES,

13 Respondent.

14 Case No. 1:21-cv-00567-AWI-EPG-HC

15 ORDER ADOPTING FINDINGS AND
RECOMMENDATION, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF
APPEALABILITY

16 (ECF No. 5)

17 Petitioner John Cedillo is a state prisoner proceeding *pro se* with a petition for writ of
18 habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States
Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

19 On April 30, 2021, the Magistrate Judge issued Findings and Recommendation
20 recommending that the petition be dismissed for failure to state a cognizable federal habeas
21 claim. (ECF No. 5). The Findings and Recommendation was served on Petitioner and contained
22 notice that any objections were to be filed within thirty (30) days of the date of service of the
23 Findings and Recommendation. On June 21, 2021, Petitioner filed untimely objections. (ECF
24 No. 6).

25 In the interest of justice, the Court will review Petitioner's untimely objections. Petitioner
26 argues that the state courts' denial of his petition for relief pursuant to Senate Bill 136 violated
27 due process and equal protection. Petitioner's judgment became final on May 26, 2017, but
28 Senate Bill 136 did not become effective until January 1, 2020. (ECF No. 6 at 1–2). As noted by

1 the Findings and Recommendation, whether Petitioner is entitled to relief under Senate Bill 136
2 is an issue of state law, and he may not “transform a state-law issue into a federal one merely by
3 asserting a violation of due process.” Langford v. Day, 110 F.3d 1380, 1389 (9th Cir. 1996).
4 Further, “[t]here is no denial of equal protection in having persons sentenced under one system
5 for crimes committed before [a certain date] and another class of prisoners sentenced under a
6 different system.” Foster v. Wash. State Bd. of Prison Terms & Paroles, 878 F.2d 1233, 1235
7 (9th Cir. 1989). See also Sperry & Hutchinson Co. v. Rhodes, 220 U.S. 502, 505 (1911) (holding
8 that “the 14th Amendment does not forbid statutes and statutory changes to have a beginning,
9 and thus to discriminate between the rights of an earlier and later time”).

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
11 a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner’s
12 objections, the Court concludes that the Findings and Recommendation is supported by the
13 record and proper analysis.

14 A state prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a
15 district court’s denial of his petition, and an appeal is only allowed in certain circumstances.
16 Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining
17 whether to issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

18 (a) In a habeas corpus proceeding or a proceeding under section
19 2255 before a district judge, the final order shall be subject to
review, on appeal, by the court of appeals for the circuit in which
the proceeding is held.

20 (b) There shall be no right of appeal from a final order in a
21 proceeding to test the validity of a warrant to remove to another
22 district or place for commitment or trial a person charged with a
23 criminal offense against the United States, or to test the validity of
such person’s detention pending removal proceedings.

24 (c) (1) Unless a circuit justice or judge issues a certificate of
25 appealability, an appeal may not be taken to the court of
appeals from—

26 (A) the final order in a habeas corpus proceeding in which
27 the detention complained of arises out of process issued by
a State court; or

28 (B) the final order in a proceeding under section 2255.

1 (2) A certificate of appealability may issue under paragraph (1)
2 only if the applicant has made a substantial showing of the
denial of a constitutional right.

3 (3) The certificate of appealability under paragraph (1) shall
4 indicate which specific issue or issues satisfy the showing
required by paragraph (2).

5 28 U.S.C. § 2253.

6 The Court should issue a certificate of appealability if “reasonable jurists could debate
7 whether (or, for that matter, agree that) the petition should have been resolved in a different
8 manner or that the issues presented were ‘adequate to deserve encouragement to proceed
9 further.’” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463 U.S.
10 880, 893 & n.4 (1983)). In the present case, the Court finds that reasonable jurists would not find
11 the Court’s determination that Petitioner’s federal habeas corpus petition should be dismissed
12 debatable or wrong, or that the issues presented are deserving of encouragement to proceed
13 further. Therefore, the Court declines to issue a certificate of appealability.

14 **III.**

15 **ORDER**

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The Findings and Recommendation issued on April 30, 2021 (ECF No. 5) is
18 ADOPTED IN FULL;
- 19 2. The petition for writ of habeas corpus is DISMISSED;
- 20 3. The Clerk of Court is DIRECTED to CLOSE the case; and
- 21 4. The Court DECLINES to issue a certificate of appealability.

22 IT IS SO ORDERED.

23 Dated: June 30, 2021

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25 SENIOR DISTRICT JUDGE